

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>MICHAEL L. WRAY</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 210,623
<b>OLDHAM'S FARM SAUSAGE, INC.</b>	)	
Respondent	)	
Self-Insured	)	
	)	
AND	)	
	)	
<b>WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Respondent requested review of the Order dated December 23, 1996, entered by Administrative Law Judge Bryce D. Benedict.

**ISSUES**

Before the presentation of any evidence and without a hearing or other procedure to afford the parties an opportunity to be heard, the Administrative Law Judge granted the Workers Compensation Fund's motion to be dismissed. Respondent requested the Appeals Board to review that Order. The only issue before the Appeals Board on this review is whether the Administrative Law Judge has denied respondent due process by entering an order without affording the respondent an opportunity to be heard or present evidence.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire the file, the Appeals Board finds as follows:

The Order entered by the Administrative Law Judge should be set aside and this proceeding should be remanded to the Administrative Law Judge for further consideration.

Although K.S.A. 44-566a(c)(2) requires the administrative law judge to dismiss the Workers Compensation Fund where there is insufficient evidence to indicate Fund liability,

that statute must be read in light of K.S.A. 44-523 which requires all parties be given reasonable opportunity to be heard and to present evidence. In this instance, the Administrative Law Judge did not afford the respondent an opportunity to be heard and, therefore, the respondent has been denied due process of law.

Upon remand the Administrative Law Judge should provide the parties an opportunity to present evidence and argument in support of their respective positions. One of the principal underlying issues in this proceeding is whether claimant sustained injury before July 1, 1994, the date selected by the legislature in K.S.A. 44-567 to end Fund liability. Upon remand, in the event the Administrative Law Judge finds that claimant may potentially recover for a May 1994 injury as respondent contends, the Administrative Law Judge should deny the Fund's request for dismissal. At the time of final award and when considering the Fund's request for payment of attorney fees, the Administrative Law Judge may consider whether respondent's contentions were reasonable and made in good faith.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order dated December 23, 1996, entered by Administrative Law Judge Bryce D. Benedict should be, and hereby is, set aside, and that this matter is remanded to the Administrative Law Judge for further consideration and proceedings. The Appeals Board does not retain jurisdiction over this matter.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Michael J. Unrein, Topeka, KS  
Mark E. Kolich, Kansas City, KS  
Michael R. Wallace, Shawnee Mission, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director